CF0000057653

CrA 1146 193

(2) 3/8/93

XII-188 (Jail)
C.J.P.R.—5,000-9-81

Division Bench (Criminal)

APPEAL OF PRISONER

No. 56. Name पोरेराम. २५५१ ✓

Father's name ५१२७०१ ✓

Residence ३१३. ५११. ३७२१ Age 28 Years. ✓

Sentenced to ३५०१७० ७१२.१७१२ on 13/7/93 ✓

Under section 302 ३१०७०/१० ✓ by ७५१० ४१७५१० ३५५ ७५१० ७२१५७०-

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it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement —

2 Date of which copy received 13/7/93

3 Date on which Appeal sent —

4 Whether the prisoner wishes to be represented or not – Yes/~~No~~. YES.

Recd. 17/7/93

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No. 56. Name पोरेराम. S/O ५१२७०१ २५५१

Continued in ~~Sub~~. Sub. Jail Jastpurnagar.

No. 8179 dated 24/7/93 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Raigarh. (M.P.)

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

Superintendent-Central/District Jail
Sub Jail Jashpur (Nagar)

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Date of receipt in C. J. M.'S Office —

Date of receipt of record to accompany —

Memo of Appeal of the Appeliate Court. —

No. 2/ CJM Raigarh 26/8/93 Dated 198

~~Forwarded to the~~ Submitted to Session Judge Raigarh

C.J.Magistrate
(Raigarh (M.P.))

Date of receipt in Appliate Court 26/8/93

(P.T.O.)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A./1116/1993 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH : BILASPUR

DIVISION BENCH : HON'BLE SHRI L.C. BHADOO AND HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1116/1993

Appellant : Jerom Ekka

Versus

Respondent : State of Madhya Pradesh

Mr. Abhay Tiwari, Counsel for the appellant.

Mr. G.D. Vaswani, Addl. Public Prosecutor for the State/respondent.

ORAL JUDGMENT

(14-11-2006)

Per L.C. Bhadoo, J

Today this matter has been listed for hearing on I.A.No. 2514/2005 whereby modification of the bail order passed by this Court dated 21.1.2003 has been sought for to enable the appellant to furnish the bail.

At the request of counsel for the appellant that the accused/appellant is in detention since 1992, the appeal has been heard for final disposal.

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XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A./1116/93 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

This appeal is directed against the judgment of conviction and order of sentence dated 13.7.1993 passed by Additional Sessions Judge, Jashpurnagar in S.T.No. 182/92 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code sentenced him to undergo imprisonment for life. However, co-accused Paskal, father of accused/appellant Jerom Ekka, was acquitted of the charge under Section 109 and 302 of the IPC.

Case of the prosecution in brief is that Laxmani Bai (PW-7) was married to Lebduram and out of the wedlock there were three girls and one boy. The deceased Lebduram went to Manipur to earn livelihood. He did not return for 2-3 years, accused Jerom Ekka developed illicit relationship with Laxmani Bai and kept her in his house as a wife. The children of Lebduram started living with Kunwarram, brother of Lebduram. Thereafter, Kunwarram informed Lebduram about this fact through a letter. On receiving the letter Lebduram returned to his village. One week prior to the date of incident, Lebduram went to the house of accused/appellant Jerom Ekka and brought his wife Laxmani Bai back to his house. On the fateful day at about 7.00-7.30 p.m. father of the accused/appellant Paskal went to the house of Lebduram to talk about Laxmani Bai and quarrelled with Lebduram. Thereafter, accused/appellant Jerom Ekka came to the house of Lebduram with lathi and attacked Lebduram with it on his head, cheek and eyes, as a result of which Lebduram sustained injuries, blood started oozing out

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मामला क्रमांक ..Cr..A:..111.6./93 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the injuries and he became unconscious. When Laxmani Bai tried to intervene, accused/appellant assaulted her also with the same lathi. Seeing this the children of Lebduram started crying, on which accused/appellant fled from the scene of occurrence. Thereafter, Kunwarram, brother of Lebduram, came to the house of Lebduram, however, by that time Lebduram had already succumbed to the injuries. Villagers also came there, Kunwarram lodged the report in the Police Station – Kunkuri and based on the report of Kunwarram, First Information Report (Ex.P-1) for the commission of offence under Section 302 of the IPC was registered. Investigating Officer left for the scene of occurrence, prepared the inquest report (Ex.P-2) of the dead body of Lebduram after giving notice to the Panchas. While in police custody, the accused/appellant gave memorandum (Ex.P-3) regarding weapon of offence i.e. lathi and in pursuance of that lathi was seized under Ex.P-4. Body of the deceased Lebduram was sent for postmortem examination to Primary Health Centre, Kunkuri where Dr. S.B. Jain (PW-5) conducted postmortem and prepared the postmortem report (Ex.P-7) in which he noticed one lacerated wound in the middle of the head in the size of 4 x ½ x ½", skull bone fracture below the wound, lacerated wound on the right side of the cheek in the size of 3 x ½ x ½", multiple fracture below the wound, lacerated wound on the right eyebrow in the size of 2 x ½ ½", lacerated wound on the left eyebrow in the size of 2 x ½ x ½". He opined that cause of death was hemorrhagic shock as a result of fracture of skull and right mandible and excessive bleeding and the death was homicidal in

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मामला क्रमांक Cr.A.1116/93 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

nature. He also examined injured eyewitness Laxmani Bai (PW-7) and prepared the injury report (Ex.P-9) in which he noticed that there was a contusion on the right side of her back.

After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Jashpurnagar who in turn committed the case to the Sessions Judge, Raigarh from where learned Additional Sessions Judge, received the case on transfer for trial.

Prosecution in order to establish the charge against the accused persons examined nine witnesses. On the other hand, statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure in which they denied the material appearing against them in the prosecution evidence and pleaded innocence and false implication in crime in question.

Learned Additional Sessions Judge after hearing the arguments of both the parties and perusal of the record convicted and sentenced the accused/appellant Jerom Ekka as aforementioned and acquitted the co-accused Paskal.

We have heard Mr. Abhay Tiwari, counsel for the accused/appellant and Mr. G.D. Vaswani, Addl. Public Prosecutor for the State/respondent.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.1116/93. **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Mr. Abhay Tiwari did not dispute the homicidal death of Lebduram. Apart from that from the ocular evidence of Laxmani Bai (PW-7), wife of the deceased and Asarita (PW-8), daughter of the deceased, it is evident that the accused/appellant assaulted the deceased with lathi on his head as a result of which deceased sustained fracture injuries of the skull bone and jaw and as per the medical evidence of Dr. S.B. Jain (PW-5) deceased Lebduram died on account of injuries sustained by him. Therefore, from the above ocular and medical evidence it is established that the death of Lebduram was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, learned counsel for the accused/appellant also did not dispute to that extent.

We have perused the evidence of eyewitnesses namely Laxmani Bai (PW-7) and Asarita (PW-8) who are the wife and the daughter of the deceased respectively. Their presence at the time of incident in their house was but natural. Laxmani Bai (PW-7) has categorically stated in her statement that in the evening first Paskal, father of accused, came to their house and started quarrelling with her husband and after sometime the accused/appellant Jerom Ekka came with lathi at about 7.00 p.m. and started attacking her husband with it. When she tried to intervene the accused also assaulted her on the back with lathi, as a result of which she became unconscious. The above evidence has been corroborated by the evidence of child

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 1116/93 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

witness Asarita who has been examined as PW-8 and has categorically stated that Jerom Ekka attacked his father with lathi. The evidence of these eyewitnesses is further corroborated by the medical evidence of Dr. S.B. Jain (PW-5) who has categorically stated in his evidence that he conducted postmortem on the body of deceased Lebduram and found that there were fracture injuries on the head and mandible bone as a result of which Lebduram died. Therefore, there is clear, cogent and reliable evidence on record to show the involvement of the accused/appellant in crime in question. Even the weapon of offence i.e. lathi was recovered at the instance of the accused under his information and thus, from the above ocular, medical evidence and circumstantial evidence the involvement of the accused/appellant in crime in question is established.

Mr. Tiwari, counsel for the accused/appellant argued that there is nothing on record to establish that the accused/appellant attacked the deceased with an intention to cause his death. He submitted that Laxmani Bai, the wife of deceased Lebduram started living with Jenom Ekka as his wife after Lebduram went to Manipur for earning livelihood, when Lebduram returned to his house, he took Laxmani Bai to his house. The accused/appellant Jerom Ekka went to the house of deceased Lebduram to bring Laxmani Bai back, some quarrel took place between them and the accused all of a sudden, in the heat of passion assaulted the deceased with lathi and as such from the above facts and evidence available on record, the offence alleged against

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मामला क्रमांक Cr.A./1116/93.. **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the accused/appellant does not travel beyond Section 304-II of the IPC.

On the other hand, learned counsel for State supported the impugned judgment of the trial Court.

We have examined the evidence of Laxamni Bai (PW-7), Asarita (PW-8), Kunwarram (PW-9) and the medical evidence of Dr. Jain (PW-5) and the postmortem report. The facts which emerges from perusal of the above evidence are that in fact Laxmani Bai was the legally wedded wife of deceased Lebduram, when he went to Manipur for earning his livelihood, the accused/appellant kept Laxmani Bai in his house as his wife and on being informed by Kunwarram, through a letter Lebduram returned to his village and took his wife back to his house from the house of the accused. Even a Panchayat was convened in this regard, the Panchayat gave a verdict that since Laxmani Bai herself has gone to the house of Jerom, she may come back of her own free will. However, it was not digested by the accused. On the fateful day father of the accused/appellant namely Paskal went to the house of Lebduram and quarreled with him. Thereafter, accused/appellant came there with lathi and as per evidence of Laxamani Bai (PW-7), the accused/appellant without waiting for a moment started assaulting Lebduram. The medical evidence shows that the accused/appellant assaulted the deceased mercilessly by giving fatal blows with lathi on the head which resulted in fracture of the skull, on the face which resulted in fracture of

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A./116/93 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

mandible and also on the forehead as a result of which Lebduram sustained lacerated wound on the right eye and eyebrow of the left eye. The intention of the accused can safely be gathered from the manner in which the assault was made, the part of the body where the injuries were inflicted and the weapon of offence used by the accused for commission of the offence and also from the circumstances leading to the offence.

Looking to the manner in which the accused attacked the deceased with lathi mercilessly that too, on the vital organ of the body which resulted in fracture of skull even after the decision of Panchayat that Laxmani Bai is legally wedded wife of Lebduram and if she is willing to go with Lebduram, he is entitled to take her back, the accused did not stop at that and came to the house of deceased with preparation carrying lathi in his hand and assaulted the deceased brutally without giving him an opportunity to talk to the accused which resulted in instantaneous death. Therefore, the intention of the accused to cause death of Lebduram was writ large, as such the argument advanced by Mr. Tiwari in this respect being devoid of substance cannot be accepted.

For the foregoing reasons, we are of the considered opinion that there is no illegality or infirmity in the impugned judgment of the trial Court as the same is based on the legal, clinching, convincing and credible evidence.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In the result, the appeal being devoid of merits is liable to be dismissed and the same is hereby dismissed. Sd/- L.C.BHADOO Judge Sd/- DHIRENDRA MISHRA Judge	

YOGENDRA SINGH KANWAR
Digitally signed by YOGENDRA SINGH KANWAR
Date: 2025.02.07 11:00:21 +0530

P.T.O.